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File No.: 122131

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

Marc A. Hermann,
9281 Shore Road #308
Brooklyn, NY 11209

Plaintiff,

v.

Urban One, Inc.,
1010 Wayne Ave, 14th Fl
Silver Spring, MD 20910

Defendant.

Case No:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff Marc A. Hermann ("*Plaintiff*"), by and through its undersigned counsel, for its Complaint against Defendant Urban One, Inc. ("*Defendant*") states and alleges as follows:

INTRODUCTION

1. This action seeks to recover damages for copyright infringement and the violation of the DMCA for the removal of copyright management information.

2. Plaintiff herein provides photojournalism goods and services and owns the rights to these images which Plaintiff licenses to online and print publications.

3. Plaintiff has obtained U.S. copyright registrations covering many of Plaintiff's images and many others are the subject of pending copyright applications.

4. Defendant owns and operates a website known as hiphopwired.com (the "*Website*").

5. Defendant, without permission or authorization from Plaintiff actively copied, stored, and/or displayed Plaintiff's Photograph on the Website and engaged in this misconduct knowingly and in violation of the United States copyright laws.

PARTIES

6. Plaintiff Marc A. Hermann is an individual who is a citizen of the State of New York and maintains a principal place of business at 9281 Shore Road, #308, Brooklyn, New York 11209 in Kings County, New York.

7. On information and belief, defendant Urban One, Inc. is Delaware corporation with a principal place of business at 1010 Wayne Ave, Silver Spring, Maryland 20910 in Montgomery County, Maryland and is liable and responsible to Plaintiff based on the facts herein alleged.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

9. This Court has personal jurisdiction over Urban One, Inc because it maintains its principal place of business in Maryland.

10. Venue is proper under 28 U.S.C. §1391(a)(2) because Urban One, Inc does business in this Judicial District and/or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

FACTS COMMON TO ALL CLAIMS

11. Plaintiff is a professional photographer by trade who is the legal and rightful owners of photographs which Plaintiff licenses to online and print publications.

12. Plaintiff has invested significant time and money in building Plaintiff's photograph portfolio.

13. Plaintiff has obtained active and valid copyright registrations from the United States Copyright Office (the "USCO") which cover many of Plaintiff's photographs while many others are the subject of pending copyright applications.

1 14. Plaintiff's photographs are original, creative works in which Plaintiff's own
2 protectable copyright interests.

3 15. The Website is a popular and lucrative commercial enterprise.

4 16. The Website is monetized in that it contains paid advertisements and, on
5 information and belief, Defendant profits from these activities.

6 17. On June 8, 2011 Plaintiff Marc A. Hermann authored a photograph of American
7 rapper, Jeffrey Bruce Atkins, better known as "Ja Rule" (the "*Photograph*"). A copy of the
8 Photograph is attached hereto as Exhibit 1.

9 18. Plaintiff applied to the USCO to register the Photograph on May 11, 2018 under
10 Application No. 1-6574446862.

11 19. The Photograph was registered by USCO on May 11, 2018 under Registration
12 No. VA 2-104-993.

13 20. On August 15, 2018 Plaintiff observed the Photograph on the Website in a story
14 dated May 7, 2015. A copy of screengrab of Website including the Photograph is attached
15 hereto as Exhibit 2.

16 21. The Photograph was displayed at URL:
17 <https://hiphopwired.com/461734/rappers-the-game-beefed-with-young-thug/10/> and was
18 stored at URL: <https://ionehiphopwired.files.wordpress.com/2015/05/ja-rule-who-is-meme.jpg>
19

20 22. Without permission or authorization from Plaintiff, Defendant volitionally
21 selected, copied, stored and/or displayed Plaintiff copyright protected Photograph as set forth
22 in Exhibit "1" which is annexed hereto and incorporated in its entirety herein, on the Website.

23 23. On information and belief, the Photograph was copied, stored and displayed
24 without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter the
25 "*Infringement*").

26 24. The Infringement includes a URL ("*Uniform Resource Locator*") for a fixed
27 tangible medium of expression that was sufficiently permanent or stable to permit it to be
28 communicated for a period of more than transitory duration and therefore constitutes a specific

1 infringement.

2 25. The Infringement is an exact copy of the entirety of Plaintiff's original image
3 that was directly copied and stored by Defendant on the Website.

4 26. On information and belief, Defendant takes an active and pervasive role in the
5 content posted on its Website, including, but not limited to copying, posting, selecting,
6 commenting on and/or displaying images including but not limited to Plaintiff's Photograph.

7 27. On information and belief, Defendant directly contributes to the content posted
8 on the Website by, inter alia, directly employing reporters, authors and editors as its agents,
9 including but not limited to Trent Clark, whose LinkedIn page
10 (<https://www.linkedin.com/in/trent-clark-1624218b>) lists him as a Senior Editor at
11 HipHopwired.com during the time of the infringement ("Employees").

12 28. On information and belief, at all material times the Employees were acting
13 within the course and scope of their employment when they posted the Infringement.

14 29. On information and belief, at all material times the Employees were acting
15 within the course and scope of their agency when they posted the Infringement.

16 30. On information and belief, the Photograph was willfully and volitionally posted
17 to the Website by Defendant.

18 31. On information and belief, Defendant is not registered with the United States
19 Copyright Office pursuant to 17 U.S.C. §512.

20 32. On information and belief, the Infringement were not posted at the direction of
21 a "user" as that term is defined in 17 U.S.C. §512(c).

22 33. On information and belief, Defendant was aware of facts or circumstances from
23 which the determination regarding the Infringement was apparent. Defendant cannot claim that
24 it was aware of the infringing activities, including the specific Infringement which form the
25 basis of this complaint, since such a claim would amount to only willful blindness to the
26 Infringement on the part of Defendant.

27 34. On information and belief, Defendant engaged in the Infringement knowingly
28

1 and in violation of applicable United States Copyright Laws.

2 35. On information and belief, Defendant had complete control over and actively
3 reviewed and monitored the content posted on the Website.

4 36. On information and belief, Defendant has the legal right and ability to control
5 and limit the infringing activities on its Website and exercised and/or had the right and ability
6 to exercise such right.

7 37. On information and belief, Defendant monitors the content on its Website.

8 38. On information and belief, Defendant has received a financial benefit directly
9 attributable to the Infringement.

10 39. On information and belief, the Infringement increased traffic to the Website and,
11 in turn, caused Defendant to realize an increase its advertising revenues and/or merchandise
12 sales.

13 40. On information and belief, a large number of people have viewed the unlawful
14 copies of the Photograph on the Website.

15 41. On information and belief, Defendant at all times had the ability to stop the
16 reproduction and display of Plaintiff's copyrighted material.

17 42. Defendant's use of the Photograph, if widespread, would harm Plaintiff's
18 potential market for the Photograph.

19 43. As a result of Defendant's misconduct, Plaintiff has been substantially harmed.
20

21 **FIRST COUNT**

22 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

23 44. Plaintiff repeats and incorporates by reference the allegations contained in the
24 preceding paragraphs, as though set forth in full herein.

25 45. The Photograph is an original, creative works in which Plaintiff owns valid
26 copyright properly registered with the United States Copyright Office.

27 46. Plaintiff has not licensed Defendant the right to use the Photograph in any
28 manner, nor has Plaintiff assigned any of its exclusive rights in the copyrights to Defendant.

1 54. Upon information and belief, in its article on the Website, Defendant copied the
2 Photograph from [https://www.nydailynews.com/entertainment/gossip/ja-rule-begins-two-](https://www.nydailynews.com/entertainment/gossip/ja-rule-begins-two-year-prison-sentence-pleading-guilty-nyc-gun-case-article-1.128309)
3 [year-prison-sentence-pleading-guilty-nyc-gun-case-article-1.128309](https://www.nydailynews.com/entertainment/gossip/ja-rule-begins-two-year-prison-sentence-pleading-guilty-nyc-gun-case-article-1.128309) which contained a photo
4 credit underneath the Photograph stating “Marc A. Hermann for News” as the owner and author
5 of the Photograph. A copy of the aforementioned article is attached hereto as Exhibit 3.

6 55. Upon information and belief, Defendant intentionally removed copyright
7 management information related to the Photograph with the intent to induce, enable, facilitate,
8 or conceal an infringement of Plaintiff's rights under the Copyright Act. Specifically, Defendant
9 purposefully failed to include the photo credit originally conveyed with the Photograph in order
10 to mislead the public into believing that Defendant either owned the Photograph or had
11 legitimately licensed them for use in the Infringement.

12 56. In addition, Defendant displayed the unauthorized copies of the Photograph
13 knowing the copyright management information had been removed.

14 57. Defendant' conduct violates 17 U.S.C. § 1202(a) and 1202(b).

15 58. Upon information and belief, Defendant's falsification, removal and/or alteration
16 of the aforementioned copyright management information was made without the knowledge or
17 consent of Plaintiff.

18 59. Upon information and belief, the falsification, alteration and/or removal of said
19 copyright management information was made by Defendant intentionally, knowingly and with
20 the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in
21 the Photograph. Defendant also knew, or should have known, that such falsification, alteration
22 and/or removal of said copyright management information would induce, enable, facilitate, or
23 conceal their infringement of Plaintiff's copyright in the Photograph.

24 60. Plaintiff has sustained significant injury and monetary damages as a result of
25 Defendant' wrongful acts as hereinabove alleged, and as a result of being involuntarily
26 associated with Defendant in an amount to be proven.

27 61. In the alternative, Plaintiff may elect to recover statutory damages pursuant to
28

1 17 U.S.C. § 1203(c)(3) in a sum of not more than \$25,000 from Defendant for each violation
2 of 17 U.S.C. § 1202.

3 62. Alternatively, Plaintiff may elect to recover from Defendant statutory damages
4 pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation
5 of 17 U.S.C. § 1202.

6 **JURY DEMAND**

7 63. Plaintiff hereby demands a trial of this action by jury.

8
9 **PRAYER FOR RELIEF**

10 **WHEREFORE** Plaintiff respectfully requests judgment as follows:

11 That the Court enters a judgment finding that Defendant has infringed on Plaintiff's
12 rights to the Photograph in violation of 17 U.S.C. § 501 et seq. and award damages and monetary
13 relief as follows:

- 14 a. finding that Defendant infringed Plaintiff's copyright interest in the
15 Photograph by copying and displaying without a license or consent;
16 b. for an award of actual damages and disgorgement of all of Defendant's
17 profits attributable to the infringements as provided by 17 U.S.C. §
18 504(b) in an amount to be proven;
19 c. for an award of actual damages or, in the alternative, statutory damages
20 against each Defendant in an amount up to \$25,000.00 for each
21 falsification or removal of copyright management information pursuant
22 to 17 U.S.C. § 1202;
23 d. for an order pursuant to 17 U.S.C. § 502(a) enjoining Defendant from
24 any infringing use of any of Plaintiff's works;
25 e. for costs of litigation and reasonable attorney's fees against Defendant
26 pursuant to 17 U.S.C. § 505;
27 f. for pre judgment interest as permitted by law; and
28

g. for any other relief the Court deems just and proper.

DATED: June 7, 2021

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